



Louisiana Supreme Court decision in *Taranto* could open floodgates to thousands of new Katrina claims

By David A. Strauss

With arrival of the five-year anniversary of Hurricane Katrina, many recovery issues still remain in South Louisiana. Katrina also presented a number of novel legal challenges, some of which also remain. In particular, a basic but important question with far reaching consequences is unresolved: may property owners, five years after the hurricane, still bring a lawsuit against their insurance company for damages caused by Katrina? The answer to that question will have a significant impact on the residents and courts of Louisiana, as thousands of insurance coverage suits were recently filed following a few state court appellate decisions from one appellate district that suggested the time for property owners to bring their cause of action was suspended by the filing of broad based putative class actions against the insurance industry. Fortunately, the highest court in Louisiana will likely answer that question sometime within the next three to six months in the pending case of *Taranto v. Louisiana Citizens Property Insurance Corporation*. The Louisiana Supreme Court recently accepted writs that squarely present the issue of whether or not the filing of certain putative class actions in the Eastern District of Louisiana in August of 2007 served to suspend prescription for all putative class members, thereby extending the time to file a lawsuit against an insurer. Central to the answer to this question is the determination of whether the filing of a putative class action can serve to interrupt a contractual limitation period. Underscoring the importance of this issue, several amicus briefs have been filed by individual insurers and insurance industry associations, as well as the local trial lawyers association, in the *Taranto* Supreme Court proceedings.

Most insurance policies at issue in Katrina claims had a typical contractual limitation period, stipulating that any lawsuits filed by an insured against the insurance company must be filed within one year after the date of loss (Katrina struck Louisiana on August 29, 2005). After the mass destruction caused by Katrina, the Louisiana Legislature decided it was necessary to extend the time period within which insureds could file lawsuits against their insurers for damages caused by Katrina. Specifically, the Legislature enacted Act 802, which “establishe[d] an additional, limited exception to the running of prescription . . . prevent[ing] the running of prescription for one year on any claim seeking to recover for loss or damage to property against an insurer on any homeowner’s insurance policy...” Act 802 § 2. In other words, a two year prescriptive period was legislatively created such that any lawsuits for Hurricane Katrina related damage must have been filed by August 30, 2007.

However, in *Taranto* the Louisiana Fourth Circuit Court of Appeals effectively extended the time to file lawsuits against insurers for Hurricane Katrina damage beyond the time already extended by the legislative act. The appellate court held that the filing of certain putative class actions in the Eastern District of Louisiana in August of 2007 served to suspend prescription for all putative class members, thereby finding that a Katrina lawsuit filed in June 2008 was timely filed. The appellate court in *Taranto* based its decision on Louisiana Code of Civil Procedure Article 596 and a prior Fourth Circuit opinion that summarily addressed this issue, *Pitts v.*

Louisiana Citizens Property Insurance Corp., 4 So.3d 107 (La.App. 4 Cir. 2009). Article 596 provides that “[l]iberative prescription on the claims arising out of the transactions or occurrences described in a petition brought on behalf of a class is suspended on the filing of the petition as to all members of the class as defined or described therein.” The ruling in *Taranto* found that article 596 applied to contractual limitation periods in an insurance policy and not just liberative prescription periods.

The insurance industry argues, though, that Article 596 only applies to *liberative prescription* periods and not to contractual limitation periods. Insurers have enjoyed some success with this argument in both state and federal trial courts. For example, in *Dixey v. Allstate Insurance Company*, 681 F.Supp.2d 740 (E.D. La. 2010), a justice in the United States District Court for the Eastern District of Louisiana (located in New Orleans) held that Article 596 does not suspend contractual limitations periods but rather only suspends periods of liberative prescription. That court held that extending Article 596 to suspend prescription on contractual limitations would violate the Contract Clause of the United States and Louisiana constitutions. Thus the *Dixey* court found that a Katrina suit filed in 2009 was not timely filed.

The courts in Louisiana are divided as to whether insureds may still file suit against their insurer for damages caused by Hurricanes Katrina. So what will be the impact of the Louisiana Supreme Court’s decision in *Taranto*? Currently, thousands of newly filed Hurricane Katrina lawsuits are pending throughout the Louisiana State and Federal courts. If the Louisiana Supreme Court rules that all Hurricane Katrina lawsuits must have been filed by August 30, 2007, then any pending cases that were filed after that date would be subject to dismissal as being untimely. On the other hand, if the Louisiana Supreme Court rules that the filing of the class actions did suspend prescription on Katrina insurance suits, then the many newly filed Katrina cases which are currently in procedural limbo will proceed, and it is likely that many more will be filed. This will effectively create “round 3” of mass filings and litigation in a court system that is fatigued by rounds 1 and 2, and about to face many new insurance coverage filings related to Hurricanes Gustav and Ike as those prescriptive periods are fast approaching. Further, the insurance industry is sure to consider the Supreme Court’s handling of this issue when assessing its interest in underwriting risk in Louisiana. A finding that new Katrina suits may still be filed may further limit the availability of property insurance and raise premiums in a market that already is restricted.